latent rights and reservations above mentioned.[9] On the other hand, it has been held valid, as well under the most liberal conception of the legislative power of taxation as under the requirement of public purposes.[10] A recent South Carolina case regards such a tax as not for public purposes and consequently invalid. *Aetna Fire Insurance Co.* v. *Jones*, 59 S. E. 148. Had the court followed the Alabama case,[11] which it misconceived and which seems the most satisfactory case on this subject, the statute would have been considered within the powers of the legislature. For it is clear that there is the possibility that such a tax promotes the public welfare. It is not, therefore, a question of right for the courts, but a question of policy for the legislature.

INEFFECTUAL CHANGE OF THE BENEFICIARIES OF MUTUAL BENEFIT CERTIFICATES. — Upon the death of a member of a mutual benefit association who has made an ineffectual change of beneficiaries, the problem is presented whether the proceeds should be paid to the original beneficiary or to the persons designated by the society's rules or by statute to receive them if no beneficiary is named. The attempted change may be ineffectual because the second beneficiary is incapable of taking by the rules of the society or by statute, or because of failure to comply with the prescribed formalities. It should be noted that compliance with the formalities is not always necessary for an effectual change; for before the member's death the society can waive such compliance and complete the change, and the original beneficiary cannot object, since, unlike the beneficiary of an ordinary insurance policy, his rights vest only on the member's death.[1] If, however, the change is ineffectual for any reason, the important question then is, whether or not the act done operated as a revocation of the original designation. If the change attempted was in the nature of an assignment or one which, if ineffectual, leaves the original obligation payable on its face to the first beneficiary, the general rule is that he may recover.[2] There may, however, be grounds for equitable interference. If the cause of the invalidity of the change is attributable to the first beneficiary, he will not be allowed to profit by his own wrong, and the proceeds will be paid as though the change had been accomplished. The same result may be reached if the insured did all in his power to make the change but was prevented by death or because the conditions were impossible of performance.[3] Unless some such exceptional case exists, the fact that the original designation has never been properly revoked will protect the first beneficiary.

If, however, there has been a sufficient revocation of the original designation, the rights of the first beneficiary are completely destroyed. A contrary result, it is true, has been reached in several cases which hold that although the original certificate was surrendered and a new one issued, as the second

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[9] Phila. Ass'n *v.* Wood, *supra*; San Francisco *v.* Ins. Co., *supra*; State *v.* Wheeler, *supra*.

[10] Firemen's Benev. Ass'n *v.* Lounsbury, *supra*; Phœnix Assurance Co. *v.* Fire Dept., *supra*.

[11] Phœnix Assurance Co. *v.* Fire Dept., *supra*.

[1] Titsworth *v.* Titsworth, 40 Kan. 571. *Cf.* McLaughlin *v.* McLaughlin, 104 Cal. 171.

[2] Elsey *v.* Odd Fellows', etc., Ass'n, 142 Mass. 224.

[3] Grand Lodge *v.* Child, 70 Mich. 163. See 16 HARV. L. REV. 67.

was invalid, the beneficiary named in the first should recover.[4] This result, however, seems unsound. Since a certificate may be surrendered or revoked without a new beneficiary being named,[5] it would seem that when the revocation is once complete all the beneficiaries' rights are forever extinguished, and the issue of any later certificate, whether invalid or not, is immaterial. A recent case reaches this result, holding that when the new certificate is invalid the proceeds should be distributed as though no designation had ever been made. *Grand Lodge, etc.*, v. *Mackey*, 104 S. W. 907 (Tex., Civ. App.).[6] The only possible theory on which a contrary result can be justified is on analogy to the law of dependent relative revocation of wills, where, in certain cases, when an attempt is made to substitute an invalid gift for a valid one, the court will set aside the revocation and allow the old gift to stand. But the better view in such cases is that if the revocation is not really conditional, but absolute, although made because of the desire to change the legatee, the old gift will not be revived unless that result is clearly the intent of the testator.[7] If equity would interfere only in cases where such proof is made, little objection could be made to an extension of the doctrine to the revocation of mutual benefit certificates. For the indiscriminate interference which has confused the law of both subjects there can be no excuse.

CONFLICTING RECEIVERSHIPS. — Recently New Jersey creditors of a New York corporation secured the appointment of receivers for its property by the federal circuit court. Shortly thereafter, the attorney-general of New York instituted proceedings in the state courts to dissolve the corporation, pursuant to statute, because it had been insolvent for a year; and moved for the appointment of receivers for its property, as permitted by statute in such proceedings. The court, following Mr. Alderson's work on Receivers, granted the motion, but, though it believed its receivers entitled to possession, instructed them in deference to a spirit of comity not to molest the federal receivers, and to request the federal court to relinquish control. *People* v. *N. Y. City Ry.*, 107 N. Y. Supp. 247. The moderate form of this decree reaches a proper result,[1] but it is believed that the attitude of the court was wrong both in its reasoning and on authority. The inviolability of property in the hands of a receiver appointed by a court of competent jurisdiction is well settled.[2] In the present case the court admitted that there were facts sufficient to give either state or federal court jurisdiction, and that when two courts have concurrent jurisdiction of a controversy, the assumption of jurisdiction by one court excludes the other. It went on, however, to quote a dictum of Mr. Justice Bradley: "But where the objects of the suits are different, this rule does not apply, although the thing about or in reference to which the litigation is had is the same in both cases."[3] It then pointed out that the suit in the federal court was to continue the exist-

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[4] Grace *v.* N. W., etc., Ass'n, 87 Wis. 562; Smith *v.* B. & M., etc., Ass'n, 168 Mass. 213.

[5] Cullin *v.* Knights of Maccabees, 77 Hun (N. Y.) 6.

[6] Accord, Carson *v.* Vicksburg Bank, 75 Miss. 167.

[7] See Tupper *v.* Tupper, 1 Kay & J. 665.

[1] State *v.* Port Royal, etc., Ry., 23 S. E. 363, 368; aff. 45 S. C. 413; *ibid.* 470.

[2] *In re* Tyler, 149 U. S. 164; O'Mahoney *v.* Belmont, 62 N. Y. 133, 149. See 17 HARV. L. REV. 196.

[3] Wilmer *v.* Atlantic, etc., Ry., 2 Woods (U. S.) 409, 425.